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Equity -- Injunction to Restrain Enforcement of Municipal Ordinance

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the same because he needed the money." There were eight of these "buyers of salaries" from whom the plaintiff had borrowed a number of sums ranging from $5.00 to $15.00 each over a year's time. Although the defendants in their counter-claim had raised a legal issue on which plaintiff was by the Constitution entitled to a jury,[5] the case was referred to an auditor. The plaintiff excepted on the ground, among others, that the auditor was prejudiced against enforcement of the small loans of the state, and was disqualified because other loan companies were clients of his law office. Finally, it was alleged that the service of the wage assignment on the employer would cause plaintiff to lose his position. The court objected that the allegation was too general, in that it did not set out facts to show petitioner would lose his position or be irreparably injured. But in an earlier Georgia case,[6] plaintiff had failed although he set out a contract of employment in which the plaintiff was to be discharged, if garnishment or wage assignment papers were ever served.

This characteristic failure[7] to investigate the actualities of economic duress and of the effects of garnishment proceedings in connection with the small loan business is, doubtless, the reason for remedial legislation in Massachusetts[8] and Minnesota[9] and for the drastic action of the California[10] and Kansas[11] courts, which last year, upon injunction proceedings brought by the Attorney General, stopped the operation of a "loan-shark" business as a public nuisance.

H. B. PARKER.

Equity—Injunction to Restrain Enforcement of Municipal Ordinance

An ordinance imposed an occupation tax upon persons engaged in the business of delivering gasoline and oils from wagons or trucks. Plaintiff failed to pay this tax and defendant caused a levy to be made

[5] GA. CONST., §18, par. 1; CLARK, CODE PLEADING (1928) 64.
[6] Patterson v. Moore, *supra* note 3.
[7] Lisle, *A Widespread Form of Usury: The "Loan-Shark"* (1912) 3 J. CRIM. L. 167; Hodson, *Ideal Anti-Loan Shark Statute* (1919) 10 J. CRIM. L. 129.
[8] ACTS MASS. (1911) c. 727, §13; Thomas v. Bunce, 223 Mass. 311, 111 N. E. 871 (1916).
[9] MINN. STAT. (Mason, 1927) §7040; Trauernicht v. Kingston, 136 Minn. 445, 195 N. W. 278 (1923).
[10] People *ex rel* Stephens v. Seccombe, 284 Pac. 725 (Cal. App. 1930); (1930) 18 CALIF. L. REV. 328.
[11] State v. McMahon, 280 Pac. 906 (Kan. 1929); (1929) 15 CORN. L. Q. 472; (1929) 43 HARV. L. REV. 499; (1929) 28 MICH. L. REV. 939.

upon certain of plaintiff's property. Prosecutions were also begun against plaintiff's agents, and defendant threatened to continue to prosecute. *Held,* the refusal of the lower court to enjoin the prosecutions and executions was error, equitable intervention being necessary to protect property rights and to prevent a multiplicity of actions.[1]

The courts have repeatedly laid down the general rule that equity will not restrain the enforcement of a municipal ordinance, saying that an adequate remedy is available at law by setting up the invalidity or inapplicability of the ordinance as a defense to a criminal prosecution. And most courts accordingly deny relief in the bulk of the cases.[2]

Well-recognized exceptions to the rule, however, are where injunctive relief is necessary to prevent irreparable injury to property, or the necessity of defending a multiplicity of prosecutions.[3] Thus, injunctive relief has been granted to restrain the enforcement of an ordinance making it unlawful to operate a baseball park in a certain district;[4] prescribing paved floors and sewerage connections for all stables wherein more than one animal is kept;[5] providing an occupation tax of $300.00 for ice dealers, and $100.00 additional for each wagon used;[6] prescribing certain safety appliances for street cars, under penalty of $100.00 or thirty days in jail, where the city was also threatening to stop cars and to arrest employees operating cars without the prescribed appliances;[7] prohibiting the erection or maintain-

[1] Wofford Oil Co. v. City of Boston, 154 S. E. 145 (Ga. 1930).

[2] City of Savannah v. Granger, 145 Ga. 578, 89 S. E. 690 (1916); Jones v. Carlton, 146 Ga. 1, 90 S. E. 278 (1916); Steinberg v. City of Savannah, 149 Ga. 69, 99 S. E. 36 (1919); Burton v. City of Toccoa, 158 Ga. 63, 122 S. E. 603 (1924); Deloney v. Village of Columbia, 142 La. 291, 76 So. 717 (1917); City of Dallas v. Cluck and Murphey, 234 S. W. 528 (Tex. Civ. App. 1921); Los Angeles Title Insurance Co. v. City of Los Angeles, 52 Cal. App. 152, 198 Pac. 1001 (1921); Giglio v. Barrett, 207 Ala. 728, 92 So. 668 (1922); Edwards v. DeVance, 138 Miss. 580, 103 So. 194 (1925).

[3] 4 POMEROY, EQUITY (4th ed., 1919) §1777; 2 LAWRENCE, EQUITY (1929) §972; 2 DILLON, MUNICIPAL CORPORATIONS (5th ed., 1911) §§650, 1573; McQUILLAN, MUNICIPAL CORPORATIONS (2nd ed., 1928) §851, citing many cases and illustrations; Notes (1893) 21 L. R. A. 84; (1906) 2 L. R. A. (N. S.) 631; (1910) 25 L. R. A. (N. S.) 193; (1911) 34 L. R. A. (N. S.) 454; (1912) 35 L. R. A. (N. S.) 193; L. R. A. 1916C 263.

[4] New Orleans Baseball & Amusement Co. v. City of New Orleans, 118 La. 228, 42 So. 784, 7 L. R. A. (S. C.) 1114 (1907).

[5] Board of Comm'rs. of Mobile v. Orr, 181 Ala. 308, 61 So. 920, 45 L. R. A. (N. S.) 575 (1913).

[6] Williams v. Mayor and Council of Waynesboro, 152 Ga. 696, 111 S. E. 47 (1922). See also Southern Express Co. v. Town of Ty Ty, 141 Ga. 421, 81 S. E. 114 (1914).

[7] Mahoning & S. Ry. & Light Co. v. City of New Castle, 233 Pa. 413, 82 Atl. 501 (1912).

ance of more than one crematory to a township;[8] of a licensing ordinance for peddlers;[9] of an ordinance prohibiting the driving of any "engine or heavy machinery" over paved streets, in a suit by the owner of a machine shop who could not otherwise reach the railway station;[10] prohibiting commercial advertising on the outside of street cars;[11] prohibiting the maintainance of any hospital within the city for the treatment of contagious or infectious diseases;[12] providing a penalty for each day plaintiff gas company failed to maintain a minimum pressure, in the face of a failing supply;[13] providing for the erection of safety gates by railroad companies;[14] regulating the speed of trains through the town;[15] of an ordinance of a city the limits of which embraced considerable rural territory, prohibiting the keeping of hogs within the city.[16] In many of these ordinances, each day of violation constituted a separate offense.

The North Carolina court has been extremely conservative in allowing injunctive relief against the enforcement of ordinances. In the early case of *Cohen v. Goldsboro,*[17] the plaintiff was arrested, fined, and forced to suspend business for violation of an ordinance regulating the sale of fresh meat. Injunction was denied, the court saying that if the ordinance was invalid plaintiff had an adequate remedy at law in an action for damages as often as he was arrested.[18] In *Wardens v. Washington*[19] the court refused to pass on the validity of an ordinance prohibiting the burial of the dead within the town except on permit, and ruled likewise in *Scott v. Smith,*[20] in which plaintiff sought to restrain the enforcement of an ordinance prohibiting the playing of baseball in town without the mayor's permission.

[8] Abbey Land Improvement Co. v. San Mateo County, 167 Cal. 434, 139 Pac. 1068 (1914).
[9] Ideal Tea Co. v. City of Salem, 77 Ore. 182, 150 Pac. 852 (1915).
[10] Brown v. Nichols, 93 Kan. 737, 145 Pac. 561 (1915).
[11] Pacific Rys. Advertising Co. v. City of Oakland, 98 Cal. App. 165, 276 Pac. 629 (1929).
[12] San Diego Tuberculosis Ass'n v. City of East San Diego, 186 Cal. 252, 200 Pac. 393 (1921).
[13] Kansas City Gas Co. v. Kansas City, 198 Fed. 500 (W. D. Mo. 1912).
[14] Chesapeake & O. Ry. Co. v. Harmon, 163 Ky. 669, 156 S. W. 121 (1913).
[15] Lusk v. Town of Dora, 224 Fed. 650 (N. D. Ala. 1915).
[16] Dibrell v. Town of Coleman, 172 S. W. 550 (Tex. Civ. App. 1914). But *cf.* Brown v. City of Thomasville, 156 Ga. 260, 118 S. E. 854 (1923); Upchurch v. City of LaGrange, 159 Ga. 113, 125 S. E. 47 (1924).
[17] 77 N. C. 2 (1877).
[18] Since a town is not liable to respond in damages for attempting to exercise a misconceived governmental power, and since arresting officers are usually insolvent, the inadequacy of this remedy is readily apparent.
[19] 109 N. C. 21, 13 S. E. 700 (1891).
[20] 121 N. C. 94, 28 S. E. 64 (1898).

Actions seeking to test the validity of ordinances regulating saloons and providing for forfeiture of license on conviction,[21] and providing for the removal of all telegraph or light poles to within twenty-four inches of the curb,[22] were similarly dismissed. However, the past five years have witnessed a tendency on the part of the court to relax the rigidity of these earlier decisions,[23] reliance being placed upon a line of Federal decisions beginning with *Truax v. Raich*.[24] In a suit to enjoin the enforcement of an ordinance prohibiting the sale of meats within a defined area except at the municipal market, Clarkson, J., went into the merits of the case and held the ordinance valid, but intimated that injunction would otherwise lie.[25] And in *Advertising Co. v. Asheville*[26] an injunction was granted to restrain the enforcement of an alleged confiscatory taxing ordinance.

It is submitted that courts should liberalize the use of the injunction to test the validity and construction of town ordinances.[27] The

[21] Paul v. Washington, 134 N. C. 363, 47 S. E. 763 (1904).

[22] R. R. v. Morehead City, 167 N. C. 118, 83 S. E. 259 (1914). In this case, however, Hoke, J., goes into the merits, although denying that injunction would lie to restrain prosecutions, and holds the ordinance valid.

[23] Clark, C. J., in Express Co. v. High Point, 167 N. C. 103, 83 S. E. 254 (1914): "I concur that an injunction does not lie to restrain the State against executing its criminal law. The defendant has a full remedy by raising any objection to the validity of the law upon the trial of the indictment for the criminal offense. Equity never interferes, especially by injunction, when there is a full remedy at law." To this same unqualified language of Clark, C. J., in Turner v. New Bern, 187 N. C. 541, 122 S. E. 469 (1924) Hoke, Stacy and Adams, JJ., registered their dissent, saying that equity would intervene if required for the adequate protection of property rights, but concurred in the result, holding the ordinance valid.

[24] 239 U. S. 33, 36 Sup. Ct. 7, 60 L. ed. 131, L. R. A. 1916D 545 (1915). Pierce v. Society of Sisters, 268 U. S. 510, 45 Sup. Ct. 571, 69 L. ed. 1070 (1925); Terrace v. Thompson, 263 U. S. 197, 44 Sup. Ct. 15, 68 L. ed. 255 (1923).

[25] See Angelo v. Winston-Salem, 193 N. C. 207, 212, 136 S. E. 489, 492, 52 A. L. R. 663, 666 (1926).

[26] 189 N. C. 738, 128 S. E. 149 (1925). But *cf.* Crawford v. Town of Marion, 154 N. C. 73, 69 S. E. 763, 35 L. R. A. (N. S.) 193 (1910) in which the court granted the injunction, but denied the question of restraining the enforcement of the criminal law was involved.

[27] See (1923) 9 A. B. A. J. 168, in which Mr. Simon Fleischman directs an argument in favor of the use of the injunction after the violation but before the trial. This seems to stop far short of the full usefulness of the remedy.

The situation in Elizabeth City v. Aydlett, 198 N. C. 585, 152 S. E. 681 (1930) is just the opposite of that in the instant case. The city had prosecuted defendant criminally for violation of an ordinance. A local court held the ordinance invalid and discharged defendant, leaving the city with no right of appeal. The city then sought to enjoin a further violation of the ordinance, but the relief asked for was denied, the court apparently relying largely on decisions to the effect that equity would not enjoin the *enforcement* of ordinances.

same policy behind the move to empower courts to render declaratory judgments furnishes a sound argument. The use of this method would spare the plaintiff whom the ordinance effects the necessity of choosing between a curtailment of operations to conform to the ordinance or the stigma of defending a criminal prosecution and risking an adverse result, with consequent fine or sentence.[28] One who tries in good faith to obey valid laws and ordinances should not be forced by the courts to become a lawbreaker in order to protect his constitutional rights, on the now exploded assumption that such a procedure constitutes an "adequate remedy" at law.

PEYTON B. ABBOTT, JR.

Evidence—Impeaching Witness by Showing Religious Belief

Can a witness be impeached by inquiring into his religious faith? This is one of the principal questions raised in *State v. Beal*,[1] the dramatic murder trial growing out of the recent Gastonia strike disturbances. The opinion expressly avoids a definite answer, but general phases of the problem may profitably be considered.

Competency and Credibility

The common law idea of purging the witness box of prejudiced and inferior witnesses has been superseded by a more enlightened technique. Those qualities which formerly prevented the witness from testifying at all—interest, infamy, and coverture—are now considered on the question of how much credit, conceding him to be competent, is to be given to the witness by the triers of fact.[2] This change has been facilitated by the broad scope of the theory of testimonial impeachment. All matters which give rise to an inference or chain of inferences leading to the conclusion that the witness is presently lying are relevant.[3] The grounds of attack most commonly accepted as thus relevant are those which formerly formed the basis

[28] In the recent case of Standard Oil Co. v. City of Charlottesville, 42 F. (2d) 88 (C. C. A. 4th., 1930), plaintiff sought to enjoin the enforcement of an ordinance intended to be a substitute for a zoning ordinance, which the city was without power to pass under the circumstances. The District Court held the ordinance valid, denied the injunction. Reversed, with instructions that the injunction would lie, because the penalty provided for violation was so great that it would be dangerous to test the validity in a criminal prosecution. Parker, Circuit Judge, quotes from Terrace v. Thompson, *supra* note 24, to the effect that "the legal remedy must be as complete, practical and efficient as that which equity could afford."

[1] 199 N. C. 276, 154 S. E. 604 (1930).

[2] 2 WIGMORE, EVIDENCE (1923) § 876.

[3] *Ibid.*, §877.